



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF FISH & WILDLIFE
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October 10, 2011

Regional Director, Midwest Region
Attn: Lisa Mandell
U.S. Fish and Wildlife Service, Ecological Services
5600 American Blvd. West, Suite 990,
Bloomington, MN 55437-1458

Dear Ms. Mandell:

Please accept the attached comments on behalf of the Delaware Division of Fish and Wildlife regarding the *Draft Multi-Species Habitat Conservation Plan (HCP)*, NiSource, Inc., Incidental Take Permit application (ITP) TE02636A. We are commenting only on the Draft HCP.

If further information is needed, please contact Holly Niederriter at 302-735-8651.

Sincerely,

David E. Saveikis
Director



Attachment 1. Delaware Division of Fish and Wildlife comments regarding an application from NiSource, Inc., for an incidental take permit (ITP) TE02636A under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; ESA). These comments address only the Draft HCP.

- 6.1.2, page 2: This section includes a list of Natural Heritage Programs contacted for species information. The Delaware Natural Heritage and Endangered Species Program was consulted but is not listed.
- Time of year restrictions (mentioned in several locations in chapter): The bog turtle active period used for the HCP ends September 30. In Delaware, we have caught turtles above ground and active as late as October 13. We recommend amending the date until at least October 31.
- 6.2.2.3, Page 66 under Surveys to Evaluate Presence of the Species and/or Suitable¹³
Habitat: “These surveys can be conducted by qualified bog turtle surveyors (recognized by the Service and/or the appropriate State wildlife agency) or NiSource staff that has been appropriately trained by the Service”: Bog turtle habitat assessments should not be conducted by NiSource staff trained by the Service unless they appear on the approved bog turtle list for the state where the project is being conducted. There are processes in place in most northern region bog turtle states that ensure proper training and experience of bog turtle biologists prior to conducting surveys for environmental review purposes. The process, which includes experience conducting both habitat surveys and turtle surveys, ensures that all surveyors have met the standards required to recognize habitat and find turtles. Leaving the option open to allow individuals to train NiSource employees adds a level of skill variability that is not appropriate for work with this species.
- 6.2.2.3, page 67 under Surveys to Evaluate Presence of the Species and/or Suitable Habitat, Step 1: The text indicates that NiSource will maintain a GIS database of the phase 1 survey results and supply the reports and GIS data to the USFWS. As the entity that often knows of conservation opportunities and threats, the state Fish and Wildlife agencies should also receive this information. Some states maintain a similar database that includes results for both in-house and environmental survey work. Open communication between NiSource and state agency will be an asset to all parties.
- 6.2.2.3, pages 68-70 Under” Timing of Actions and Associated Generic AMMs Related to Earth Disturbance
- Under Scenario 1: “**Mucky areas ARE present in the proposed disturbance area.**” The time of year restriction suggests doing the work from April 15-September 30. It is typically recommended to NOT conduct activities during this time period in and near bog turtle habitats. This is the time of year when the turtles are likely to be active and vulnerable.
- Under Scenario 2: “**Mucky areas are NOT present in the proposed disturbance area.**” When no muck is present but the work will take place near a wetland with habitat, it would typically be recommended to conduct the work when bog turtles are not active (October 1-April 14th using the NiSource time of year restriction). The HCP suggests the opposite (that work be conducted while turtles are active to avoid impacting hibernating turtles).

- Under Scenario 3: **No wetlands occur within the proposed disturbance area, but known or assumed bog turtle wetlands occur within 300 feet of it.** To ensure that no bog turtles are harmed a pre-construction survey and fencing should be done if the work is conducted during the most active period (April 15 – June 15).
- Page 71-72: Under **Routing Criteria (replacements, loops, new ROWs, access roads):** Although directional drilling is a much less invasive method of drilling in wetland areas, it has risks that are not adequately addressed in the HCP. Frac-outs are addressed in this section but are not given the attention needed due to the toxicity of materials used to lubricate the drill (<http://www.inchem.org/documents/ehc/ehc/ehc231.htm#2.2.1>) and the unpredictability of their occurrence. They can and have happened in situations where rock fractures were not present prior to drilling. In Delaware, a frac-out occurred just outside a potential bog turtle wetland on the coastal plain (see photo, Attachment 2). A contingency plan should be in place to ensure rapid shut down and clean up should a frac-out occur at any site.

Chapter 7: Monitoring, Reporting, and Adaptive Management

- 7.3, Page 2: **“A member of this implementation team will be designated as the MSHCP Coordinator, who will be responsible for monitoring NiSource’s compliance with the MSHCP, ITP and IA as it engages in the covered activities within the covered lands.”** This section does not clearly define who will be monitoring compliance and mitigation. If NiSource employees are the only entity monitoring compliance, additional checks and balances may be needed. Someone from USFWS should be involved in assuring the HCP is being followed and that it is effective.

Attachment 2. Photograph of attempt to clean up fluids from a frac-out that occurred near a potential bog turtle habitat on the coastal plain near Delaware City, Delaware.

